

HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petitioner No. 553 of 2005 (SS)

Smt. Sulochana Devi Petitioner

Versus

1. State of Uttaranchal
2. Chief Engineer (1) P.W.D. Dehradun
3. Executive Engineer II in the office of
Chief Engineer I P.W.D. Dehradun Respondents

Mr. V.B.S. Negi, Advocate for the petitioner
Standing Counsel for the respondents.

Dated: 11.05.2005

Hon'ble Justice Rajesh Tandon, J.

Heard the learned counsel for the parties.

Present writ petition has been filed for the issue of a writ in the nature of certiorari to quash the order dated 8.4.2005 passed by the respondent no.2.

Briefly stated the petitioner was initially appointed on compassionate ground under Dying in Harness Rules, as Dak Runner in P.W.D. Sub Division, Rudraprayag. She has been transferred vide order dated 8.4.2005 to the Office of the Chief Engineer, P.W.D. Dehradun. The petitioner has submitted that she is a widow lady and having four children. The children of the petitioner are studying at Rudraprayag and their examinations are scheduled to be held from 15th May 2005. The

transfer of the petitioner in mid session would adversely affect the study of her children.

In the case of Director of School Education vs. O. Karuppa Thevan and another (1994 Supp (2) Supreme Court Cases 666 the Apex Court has held as under:

“When the authorities made the transfer for the exigencies of administration. However, the learned counsel for the respondent, contended that in view of the fact that respondent’s children are studying in school, the transfer should not have been effected during mid-academic term. Although there is no such rule, we are of the view that in effecting transfer, the fact that the children of an employee are studying should be given due weight, if the exigencies of the service are not urgent. The learned counsel appearing for the appellant was unable to point out that there was such urgency in the present case that the employee could not have been accommodated till the end of the current academic year. We, therefore, while setting aside the impugned order of the Tribunal, direct that the appellant should not effect the transfer till the end of the current academic year. The appeal is allowed accordingly with no order as to costs.”

It is also noteworthy that the petitioner was appointed on compassionate ground under Dying in Harness Rules after the

death of her husband, who left behind the petitioner and four minor children. The ground of transfer shown in the impugned transfer order (annexure-1) that after creation of Uttaranchal State the posts of Dak Runner have been abolished and it exists only in the office of Head of the Department. The petitioner was appointed on the post of Dak-runner under Dying in Harness Rules. Under these Rules there is also provision of creation of supernumerary post in the Department in which the deceased employee was serving. The impugned transfer order shows that the petitioner is the only female class IV employee being transferred by the order. Transfer of a lady class IV employee to a distant place, who was appointed on compassionate ground, would amount to throw her in further distress to some extent.

The petitioner is, therefore, at the liberty to make a representation to the respondents against her transfer within 15 days after receipt of the certified copy of this order. The respondents are directed to consider the representation of the petitioner and to trace out possibility of adjustment of the petitioner in another class IV post in the same Division and thereafter to pass appropriate orders in the light of the observations made above, within a month thereafter.

The impugned order of transfer shall remain in abeyance for a period of one and a half month only so far as it relates to the petitioner alone.

With the above observations, the writ petition is disposed of. No order as to costs.

Rajesh Tandon, J.

11.5.2005

*Dhyani